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Nov. 1, 2007.

John Dash
Applicant

Applicant: John Dash
Application No. : 10/616,165
Filing Date: 07/07/2003
For: Low Temperature Nuclear Fusion
Art Unit: 3663
Examiner: Richardo J. Palabrica
(aka Rick Palabrica)

Item 1.

A Request For Suspension Of Period Of Reply

By Applicant In Response To PTO Communication Mailed 10/15/2007
Until The End Of A Reasonable Period Of Not Less Than 30 days After The
Termination Of Proceedings Concerning Request For Reconsideration Of
Decision By The Director Of Group 3600

And Item 2

An Imperfect, "Limited" Response To Office Communication
Mailed October 14, 2007

Commissioner of Patents
P.O. Box 1450
Alexandria Va. 22313-1450

Sir:

Discussion Concerning Item 1

The Applicant has recently received an Office communication mailed Oct. 14, 2007 captioned "Detailed Action" and "Election/Restrictions" which does not even reference or acknowledge the filing in the PTO of a "Request For Reconsideration Of Decision By Donald T. Hajac, Director 3600 Mailed March 1, 2007" . The undersigned believes that a response to this request is needed as guidance as to what can and cannot be stated in complying with ^{PTO}~~PYO~~ standards in preparing an adequate response to the noted Oct. 14, 2007 election .

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This guidance is needed in order for the undersigned to avoid or at least to attempt to avoid another situation such as previously occurred in this case causing an issue as to whether a response had been filed in accordance with 37 CFR 1.3 and a related problem as to whether or not the application had been abandoned. The issue or issues in connection with this concerned whether or not a response was filed with "decorum and courtesy".

This issue or these issues can be and is considered to relate to what extent an applicant can charge that an applicant has not been properly acted upon by the Office. For example, can an applicant who believes that an examiner or higher officer of the PTO has violated one or more provisions of Title 35, USC or of 37 CFR say so in responding to an Office action which the applicant considers to evidence such a violation without facing a reaction by the Office summarily holding that the application involved has been abandoned?

In this case there is no issue as to the use of profanity, as to the ancestry or marital status of anyone in the Office, or anything else of the like. The objectionable response did, however, directly raise issues as to whether or not the application had been properly acted upon by the PTO and as to whether or

not the Office was applying "secret law" in connection with so called "cold fusion" and other related applications. It is not known if any of these issues related to the violation of any law, but this may have been or may be the case. Time has proved that these point^s were properly considered.

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In any event after these issues were raised in a response to an Office action by the Office a presently unknown "whistle blower" sent to the undersigned copies of what appear to be several Office "SAWS" documents indicating that the questions or issues referenced in the preceding were appropriately raised and probably also indicating that the Office probably had departed from its normal examining procedure by applying "secret law" in acting upon the present and presumably other applications.

Under the circumstances it would appear that the Office is withholding a decision on the noted Request For Reconsideration so as to "discourage" the undersigned from responding to the Outstanding Office action using all significant arguments available to him because of a possible penalty of having this application held to be abandoned because of a possible violation of 35 CFR 1.3. This is particularly the case since there are no known or published standards giving guidance as to the scope or meaning of this Rule. And an effect of this discouragement is to inhibit the filing of any response to this Office action which might be held to be critical of any aspect of the Office while making it possible for the Office to hold that grounds for traversing an election have been lost because they have not been set forth in order to avoid the possible consequences of being critical of the Office.

The problem here can be considered as essentially raising a question if any language can be used in responding to the Office which raises any issue

as to whether or not an application has been properly considered by the Office without causing trouble. After all a traditional statement that an examiner "erred" in some manner really isn't significantly different than a charge that he or she violated a code section or rule. What really are the standards as to what is or is not permissible to say in a response to the PTO?

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Discussion Concerning Item 2

The materiality of the preceding has influenced the content of this response to the noted Office action. This is easily illustrated with reference to a comparatively minor matter. What punitive action can be expected as a result of this discussion or, more specifically, if an issue is made as to the Examiner's conclusion that the rather routine type changes in the claims presented "*necessitated the election/restriction requirement*"?

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Similarly what action will Office take as a result of the Applicant traversing the erroneous allegation that the "*application contains claims directed to the following patently distinct species*" when the latter do not exist. Starting on line 21 of page 1 of the application it is stated

"The invention is based on the observation that significant amounts of energy in the form of heat and the production of a radioactive material, is obtained ..."

This does not indicate the presence of different species involving the reaction or reactions involved. This does not indicate as apparently implied by the Examiner that heat is applied in a traditional manner when it is a result of what happens in practicing the claimed invention.

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In view of the apparent risk that this document will be held to be non

responsive no further "strong" statements relative to the propriety of the required election of species will be made in this response. In effect they would merely be more or less cumulative of what has previously ^{been} stated in this and prior applications. This required election is traversed for the reasons noted and for reasons which are also not stated herein because they might be considered as significantly critical of the PTO or some aspect of it - including whether either the Examiner handling this ~~this~~ case or a superior of his who has "influenced" the prosecution.

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Responding to the required election is considered to be essentially improper in view of the fact that different species are not set forth and claimed. With the claimed invention heat and radioactivity are normally concurrently produced as the invention is practiced. In claim 13 nothing states how heat is produced or applied to the reactants. There is no requirement in the publicly known - as opposed to the PTO's "secret" - "patent law" field that all of the results of or of causing a reaction be delineated in the same claim. As a result of these factors it is believed probable that the concurrently required election is improper. Probably it is especially improper because it is based upon some "secret law" which is not yet fully known to the Applicant. So as to avoid an improper claim of abandonment an election of whatever the Offices considered to be the species of claim 13 is elected and is traversed for the reasons indicated herein. So as to avoid any further questions of whether or not this document is responsive it is noted that considered claims 14 to 20, inclusive are dependent under claim 13 and, hence, if claim 13 is held to in fact relate to a species they also relate to this same species. Claim 21 in substance merely adds to claim 13. Under the circumstances how can it relate to a different

species, particularly when the specification makes it clear that during the operation of the process both heat and radioactivity are concurrently produced as the process is carried out?

In addition the Applicant respectfully requests evidence that this applicant can and will be properly and fairly examined by an "open" mind or minds under circumstances which avoid any ~~a~~ question about anything improper having occurred ^{or} ~~of~~ ^{not} occurring. This should involve the Office "playing games" with FOA inquiries and examining applications under policies recognizing the learning curve and the complications of making and developing major new developments,

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Respectfully submitted -

October 31, 2007



John Dash, Applicant, on behalf of himself and
the Assignee of the noted Application